

DETAILED ACTION

This office action is in response to the RCE filed 7 January 2008.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 9-11, and 27 rejected under 35 U.S.C. 102(b) as being anticipated by Lampe (U.S. Patent 3,782,379). Regarding Claim 1, Lampe shows that it is known to carry out a method of forming an ear plug (Abstract), comprising providing silicone rubber base material and catalyst material, mixing about equal parts of the silicone rubber base material and catalyst material to form a homogenous putty; forming a module of the homogenous putty, inserting a sufficient amount of the module within an ear cavity using enough gentle pressure to allow the module to conform to the ear cavity and to form a hook like portion within the ear cavity (Abstract; Column 3, lines 14-16; it is noted that the insertion into the ear will be inherent in the in situ molding process; it is noted that "to form a hook like portion within the ear cavity" will be inherent as that is the shape of the ear cavity); leaving enough of the module outside of the cavity to grasp for removal, waiting a predetermined amount of time to cure, and removing a custom shaped ear plug (Column 9, lines 48-67; Column 10, lines 1-14; it is noted that it is inherent that material would be left outside of the ear for removal of the plug).

Regarding Claim 2, Lampe shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein providing silicone rubber base material comprises providing a polysiloxane base having moderately low molecular weight polymer with 3 to 10 silane groups per molecule and filler (Column 4, lines 51-64; Column 3, lines 14-40).

Regarding Claim 3, Lampe shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein providing silicone rubber catalyst material comprises providing a moderately low molecular weight polymer with vinyl terminal groups plus filler (Column 4, lines 34-41) and chloroplatinic acid catalyst (Abstract).

Regarding Claims 4-5, Lampe shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein mixing comprises kneading by hand to obtain a uniformly mixed homogenous putty (Column 3, lines 14-16; Column 9, lines 56-60; it is noted that using a spatula is a known equivalent to hand mixing).

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Regarding Claims 9-10, Lampe shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein inserting the module is performed within about 3 minutes from the beginning of mixing (Column 9, lines 62-65).

Regarding Claim 11, Lampe shows the process as claimed as discussed in the rejection of Claim 1 above, including a method wherein removing a custom shaped ear plug comprises grasping the module outside of the cavity and gently removing the custom shaped ear plug (Column 3, lines 4-7; during "use" the plug will be removed in this fashion).

Regarding Claim 27, Lampe shows the process as claimed as discussed in the rejection of Claim 1 above, including a method comprises mixing about equal parts of the silicone rubber base material and catalyst material to form a homogenous putty having a cure time such that the ear plug may be removed in less than about 20-30 minutes (Column 9, line 67; Column 10, lines 1-2).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 6-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lampe, in view of Lewels (U.S. Patent 3,881,570). Lampe shows the process as claimed as discussed in the rejection of Claim 1 above, but he does not show the particular shape in which the module is formed. Lewels shows that it is known to carry out a method of forming an ear plug wherein the module is formed into a bullet shape and sized module (Figure 1; it is noted that it is implicit that the particularly claimed sizes would be suggested by Lewels' disclosure since those are the sizes that would be functional as an ear plug). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Lewels' bullet shaped ear plug as that of Lampe's molding process because a bullet shaped ear plug would be comfortable to wear.

Claim 28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lampe. Lampe shows the process as claimed as discussed in the rejection of Claim 1 above, but he does not show using different colors of base and catalyst material. However, this change of color is only

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an aesthetic design change, and it is well known that matters relating to ornamentation only which have no mechanical function cannot be relied upon to patentably distinguish the claimed invention from the prior art (MPEP 2144.04 (I)).

Claim 29 is rejected under 35 U.S.C. 103(a) as being unpatentable over Lampe, in view of Onohara et al. (U.S. Patent 4,834,721). Lampe shows the process as claimed as discussed in the rejection of Claim 1 above, but he does not show using an addition type silicone rubber base. Onohara et al., hereafter "Onohara," show that it is known to carry out a method of molding an ear plug wherein the silicone rubber base is an addition type (Abstract). It would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made to use Onohara's addition type silicone base during Lampe's molding process in order to take advantage of the addition type's desirable chemical characteristics.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Monica A. Huson whose telephone number is 571-272-1198. The examiner can normally be reached on Monday-Friday 7:00am-4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on 571-272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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